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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ALLENE HUTCHINSON, an
Individual and as a Successor in
Interest to Demouria Maurice Hogg;
THE ESTATE OF DEMOURIA
MAURICE HOGG; S.J.H., a minor
and as a Successor in Interest to
Demouria Maurice Hogg by and
through her Guardian Ad Litem,
DESIREE RICHARD; D.S.H., a
minor and as a Successor in Interest
to Demouria Maurice Hogg by and
through her Guardian Ad Litem,
TYLENA LIVINGSTON, and
DOES 1-10 inclusive,

Plaintiffs,

vs.

THE CITY OF OAKLAND;
NICOLE RHODES, Individually
and as a Peace Officer, and DOES
1-10; Inclusive,

Defendants.

CASE NO.: 15-cv-05011 RS

**FIRST AMENDED COMPLAINT
FOR DAMAGES**

- 1. Unreasonable Search and Seizure - Detention and Arrest
42 U.S.C. § 1983**
- 2. Excessive Force and Denial of Medical Care - 42 U.S.C. § 1983**
- 3. Substantive Due Process - 42 U.S.C. § 1983**
- 4. Interference with Familial Relationship and Freedom of Association - 42 U.S.C. § 1983**
- 5. Municipal Liability for Unconstitutional Custom or Policy - 42 U.S.C. § 1983**
- 6. False Arrest – Wrongful Death**
- 7. Battery - Cal. Govt. Code § 820 – Wrongful Death**
- 8. Negligence – Cal. Govt. Code § 820 – Wrongful Death**

JURY TRIAL DEMANDED

1 COMES NOW ALLENE HUTCHINSON, an Individual and as a Successor
2 in Interest to Demouria Maurice Hogg; THE ESTATE OF DEMOURIA
3 MAURICE HOGG; S.J.H, a minor and as a Successor in Interest to Demouria
4 Maurice Hogg by and through her Guardian Ad Litem, DESIREE RICHARD;
5 D.S.H., a minor and as a Successor In Interest to Demouria Maurice Hogg by and
6 through her Guardian Ad Litem, Tyisha Livingston; and DOES 1-10, Inclusive,
7 allege as follows:
8

9 INTRODUCTION

10 1. This civil rights action seeks compensatory and punitive damages
11 from Defendants for violating various rights under the United States Constitution
12 and state law in connection with the fatal police shooting of the DECEDENT,
13 Demouria Hogg.
14

15 PARTIES

16 2. At all relevant times herein, THE ESTATE OF DEMOURIA HOGG
17 (hereinafter referred to as “DECEDENT”) was an individual residing in the City of
18 Oakland, County of Alameda, California.
19

20 3. At all relevant times herein, Plaintiff ALLENE HUTCHINSON was
21 an individual residing in the City of Oakland, County of Alameda, California and
22 is the natural mother of DECEDENT. ALLENE HUTCHINSON sues in her
23 individual capacity and as a representative of the ESTATE OF DEMOURIA
24 HOGG. DECEDENT was ALLENE HUTCHINSON’s son.

25 4. At all relevant times herein, Plaintiff S.J.H. was a minor residing in
26 the City of Oakland, County of Alameda, California and is the biological daughter
27 of DECEDENT. S.J.H. sues in her individual capacity and as a Successor in
28 Interest to DEMOURIA HOGG by and through her Guardian Ad Litem, DESIREE

1 RICHARD. S.J.H. sues as the surviving child of DECEDENT pursuant to Section
2 377.60 of the California Code of Civil Procedure and as a Successor in Interest to
3 DEMOURIA HOGG.

4 5. At all relevant times herein, Plaintiff D.S.H. was a minor residing in
5 the City of Oakland, County of Alameda, California and is the biological daughter
6 of DECEDENT. D.S.H. sues in her individual capacity and as a Successor in
7 Interest to DEMOURIA HOGG by and through her Guardian Ad Litem, TYLENA
8 LIVINGSTON. D.S.H. sues as the surviving child of DECEDENT pursuant to
9 Section 377.60 of the California Code of Civil Procedure and as a Successor in
10 Interest to DEMOURIA HOGG.

11 6. At all relevant times herein, Defendant THE CITY OF OAKLAND
12 (hereinafter "City") is an incorporated public entity duly authorized and existing as
13 such in and under the laws of the State of California; and at all times herein
14 mentioned, Defendant CITY has possessed the power and authority to adopt
15 policies and prescribe rules, regulations and practices affecting the operation of the
16 Oakland Police Department and its tactics, methods, practices, customs and usage.
17 At all relevant times, Defendant CITY was the employer of DOES Defendants,
18 individually and as a peace officers.

19 20 7. Plaintiffs are informed and believe and thereupon allege that
21 Defendant NICOLE RHODES is and at all relevant times mentioned herein was, a
22 resident of the State of California and County of Alameda. At all times relevant to
23 the acts and omissions herein alleged, Defendant NICOLE RHODES, was a police
24 officer, and was acting in the course and scope of his employment with the CITY
25 OF OAKLAND, and the OAKLAND POLICE DEPARTMENT. Defendant
26 RHODES is sued in her official and individual capacity.

1 8. At all relevant times, DOES Defendants, individually and as a peace
2 officers; were duly authorized employees and agents of CITY, who were acting
3 under color of law within the course and scope of their respective duties as police
4 officers and within the complete authority and ratification of their principal,
5 Defendant CITY.

6 9. At all relevant times, Defendants individually and as peace officers;
7 were duly appointed officers and/or employees or agents of CITY, subject to
8 oversight and supervision by CITY's elected and non-elected officials.

9 10. In doing the acts and failing and omitting to act as hereinafter
10 described, Defendants, individually and as peace officers; were acting on the
11 implied and actual permission and consent of the CITY.

12 11. At all times mentioned herein, each and every CITY defendant was
13 the agent of each and every other CITY defendant and had the legal duty to
14 oversee and supervise the hiring, conduct and employment of each and every CITY
15 defendant.

16 12. At all relevant times, Defendants, individually and as peace officers;
17 were working for Defendant CITY as police officers.

18 13. Plaintiffs are unaware of the true names and capacities of those
19 Defendants named herein as DOES 1-10 Defendants. Plaintiffs will amend this
20 Complaint to allege said Defendants' true names and capacities when that
21 information becomes known to Plaintiffs. Plaintiffs are informed and believes, and
22 thereon alleges that these DOES 1-10 are legally responsible and liable for the
23 incident, injuries, and damages hereinafter set forth, and that each of said
24 Defendants proximately caused the injuries and damages by reason of negligent,
25 careless, deliberately indifferent, intentional, willful, or wanton misconduct,
26 including the negligent, careless, deliberately indifferent, intentional, willful, or
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1 wanted misconduct in creating and otherwise causing the incidents, conditions, and
2 circumstances hereinafter set forth, or by reason of direct or imputed negligence or
3 vicarious fault or breach of duty arising out of the matters herein alleged. Plaintiffs
4 will seek to amend this Complaint to set forth said true names and identities of the
5 unknown named DOE Defendants when they are ascertained.

6 14. On July 7, 2015, Plaintiffs filed comprehensive and timely claim for
7 damages with CITY pursuant to applicable sections in the California Government
8 Code and California Civil Code.

9 15. CITY rejected said claim for damage by operation of law.
10

11 JURISDICTION

12 16. This civil action is brought for the redress of alleged deprivations of
13 constitutional rights as protected by 42 U.S.C. §§ 1983, 1985, 1986, and 1988, and
14 the First, Fourth and Fourteenth Amendments of the United States Constitutions.
15 Jurisdiction is founded on 28 U.S.C. §§ 1331, 1343, and 1367.
16

17 17. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c),
18 because Defendants reside in, and all incidents, events, and occurrences giving rise
19 to this action occurred in, the County of Alameda, California.
20

21 FACTS COMMON TO ALL CAUSES OF ACTION

22 18. Plaintiffs repeat and reallege each and every allegation in paragraphs
23 1 through 17 of this Complaint with the same force and effect as if fully set forth
24 herein.

25 19. On Saturday, June 6, 2015, at approximately 7:27 a.m., DECEDENT
26 was shot and killed while in his car in or around the area of Lakeshore off-ramp of
27 the Westbound Highway 580, in the City of Oakland, California.
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1 20. On information and belief, DECEDENT had not committed any
2 crime. Defendants, individually and as peace officers; who were CITY police
3 officers, had neither reasonable suspicion to detain DECEDENT nor probable
4 cause to arrest him.

5 21. Defendants, individually and as peace officers; while acting in the
6 course and scope of their employment with CITY, negligently assessed the
7 circumstances presented to them and violently confronted DECEDENT without
8 having probable cause to believe that DECEDENT had committed a crime, or
9 would commit a crime in the future.

10 22. Without warning, Defendants, individually and as peace officers;
11 broke DECEDENTS automobile driving side front and passenger windows
12 proceeded to assault and batter DECEDENT by acts which included, but were not
13 limited to, repeatedly and unjustifiably firing two deadly rounds from her (Officer
14 RHODES) department issued firearm while another officer simultaneously
15 deployed a taser striking DECEDENT all over his body, which proved to be fatal.
16 DECEDENT died as a proximate and direct cause of gun-shot wounds.

17 23. At no time during the course of these events did DECEDENT pose
18 any reasonable threat of violence to the defendant officers, nor did he do anything
19 to justify the use of deadly, excessive, unreasonable, unlawful and unnecessary
20 force against him, by the defendant officers.

21 24. Both prior to and during the time in which DECEDENT was shot and
22 killed by Defendant RHODES, he posed no reasonable or credible threat of
23 violence to Defendants, nor to any other individual. In fact, just moments before
24 he was shot and killed, DECEDENT was unconscious.

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1 25. Both prior to and during the time in which DECEDENT was tased and
2 shot to death by defendants, DECEDENT made no aggressive movements, no
3 furtive gestures, and no physical movements which would suggest to a reasonable
4 officer that the DECEDENT had the will, or the ability to inflict substantial bodily
5 harm against any individual or officer.

6 26. DECEDENT was tased and shot to death at the scene of the incident
7 by the Defendants.

8 27. On information and belief, Defendants individually and as peace
9 officers had no information that DECEDENT had committed any crime.

10 28. ALLENE HUTCHINSON was dependent on the DECEDENT,
11 including financially dependent.

12 29. Minor, S.J.H. was dependent on the DECEDENT, including
13 financially dependent.

14 30. Minor, D.S.H. was dependent on the DECEDENT, including
15 financially dependent.
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19 **FIRST CAUSE OF ACTION**

20 **Unreasonable Search and Seizure - Detention and Arrest 42 U.S.C. § 1983**
21 **(Plaintiffs ALLENE HUTCHINSON, S.J.H., D.S.H. and THE ESTATE OF**
22 **DEMOURIA HOGG against all Defendants and DOES 1-10, inclusive)**

23 31. Plaintiffs repeat and reallege each and every allegation in paragraphs
24 1 through 30 of this Complaint with the same force and effect as if fully set forth
25 herein.

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1 32. Defendants, individually and as peace officers; caused DECEDENT
2 to be detained and arrested in violation of his right to be secure in his person
3 against unreasonable searches and seizures as guaranteed to DECEDENT under
4 the Fourth Amendment to the United States Constitution and applied to state actors
5 by the Fourteenth Amendment.

6 33. As a result of the conduct of Defendants, individually and as peace
7 officers; they are liable for DECEDENT's injuries, either because they were
8 integral participants in the wrongful detention and arrest, or because they failed to
9 intervene to prevent violations.

10 34. The DECEDENT was detained without reasonable suspicion and
11 arrested without probable cause.

12 35. The conduct of Defendants, individually and as peace officers was
13 willful, wanton, malicious, and done with reckless disregard for the rights and
14 safety of DECEDENT and therefore warrants the imposition of exemplary and
15 punitive damages as to Defendants.

16 36. ALLENE HUTCHINSON, S.J.H. and D.S.H. seek damages as
17 successors-in-interest to DECEDENT and representative of the DECEDENT's
18 estate.
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20 37. Plaintiffs also seek attorney fees under this claim pursuant to 42
21 U.S.C. § 1988.

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SECOND CAUSE OF ACTION

Excessive Force and Denial of Medical Care 42 U.S.C. § 1983
(Plaintiffs ALLENE HUTCHINSON, S.J.H., D.S.H. and the ESTATE OF
DEMOURIA HOGG against all Defendants and DOES 1-10, Inclusive)

38. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 37 of this Complaint with the same force and effect as if fully set forth herein.

39. Defendants, individually and as peace officers, unjustified tasing and shooting deprived DECEDENT on his right to be secure in his person against unreasonable searches and seizures as guaranteed to DECEDENT under the Fourth Amendment of the United States Constitution and applied to state actors by the Fourteenth Amendment.

40. The unreasonable use of force by Defendants, individually and as peace officers, deprived the DECEDENT of his right to be secure in his person against unreasonable searches and seizures as guaranteed to DECEDENT under the Fourth Amendment of the United States Constitution and applied to state actors by the Fourteenth Amendment.

41. As a result, DECEDENT suffered extreme pain and suffering and eventually suffered a loss of life and of earning capacity for which THE ESTATE OF DEMOURIA HOGG is entitled to recover damages. Plaintiffs have also been deprived of their life-long love, companionship, comfort, support, society, care, and sustenance of DECEDENT, and will continue to be so deprived for the remainder of their natural lives. Plaintiffs are also claiming funeral and burial expenses, loss of gifts and benefits and loss of financial support.

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1 42. As a result of the conduct of Defendants, individually and as peace
2 officers, they are liable for DECEDENT's injuries, either because they were
3 integral participants in the excessive force, or because they failed to intervene to
4 prevent these violations.

5 43. Defendants, individually and as peace officers, knew or should have
6 known that failure to provide timely medical treatment to DECEDENT could result
7 in further significant injury or the unnecessary and wanton infliction of pain, but
8 disregarded that serious medical need, causing him great bodily harm and death.

9 44. This use of deadly force was excessive and unreasonable under the
10 circumstances, especially since DECEDENT had done nothing violent before,
11 during and after he tased and shot to death by DEFENDANT RHODES.
12 Defendants' actions, individually and as peace officers, thus deprived DECEDENT
13 of his right to be free from unreasonable searches and seizures under the Fourth
14 Amendment and applied to state actors by the Fourteenth Amendment.

15 45. The conduct of Defendants, individually and as peace officers, was
16 willful, wanton, malicious, and done with reckless disregard for the rights and
17 safety of DECEDENT and therefore warrants the imposition of exemplary and
18 punitive damages as to Defendants.

19 46. ALLENE HUTCHINSON, S.J.H. and D.S.H. seek damages as
20 successors-in-interest to DECEDENT and representative of the DECEDENT's
21 estate.

22 47. Plaintiffs also seek attorney fees under this claim pursuant to 42
23 U.S.C. § 1988.

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THIRD CAUSE OF ACTION

Substantive Due Process - 42 U.S.C. § 1983

**(Plaintiffs ALLENE HUTCHINSON, S.J.H. and D.S.H. against all Defendants
and DOES 1-10, Inclusive)**

48. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 47 of this Complaint with the same force and effect as if fully set forth herein.

49. ALLENE HUTCHINSON, S.J.H. and D.S.H. had a cognizable interest under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to be free from state actions that deprive them from life, liberty, or property in such a manner as to shock the conscious, including but not limited to, unwarranted state interference in Plaintiffs' familial relationship with DECEDENT.

50. DECEDENT had a cognizable interest under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to be free from state actions that deprive them from life, liberty, or property in such a manner as to shock the conscious.

51. As a result of the simultaneously tasing and shooting by the Defendants, individually and as peace officers, DECEDENT died. ALLENE HUTCHINSON, S.J.H. and D.S.H. were thereby deprived of their constitutional right of familial relationship with DECEDENT.

52. Defendants, individually and as peace officers, acting under the color of state law, thus violated the Fourteenth Amendment of ALLENE HUTCHINSON, S.J.H. and D.S.H. to be free from unwarranted interference with their familial relationship with DECEDENT.

1 53. The aforementioned actions of Defendants, individually and as peace
2 officers, along with other undiscovered conduct, shook the conscious, in that they
3 acted with deliberate indifference to the constitutional rights of DECEDENT,
4 ALLENE HUTCHINSON, S.J.H. and D.S.H. with purpose to harm unrelated to
5 any legitimate law enforcement objective.

6 54. As a direct and proximate cause of the acts of the Defendants,
7 individually and as peace officers, DECEDENT experienced severe pain and
8 suffering and lost his life and earning capacity for which THE ESTATE OF
9 DEMOURIA HOGG is entitled to recover damages. Plaintiffs have also been
10 deprived of their life-long love, companionship, comfort, support, society, care and
11 sustenance of DECEDENT, and will continue to be so deprived for the remainder
12 of their natural lives. Plaintiffs are also claiming funeral and burial expenses, loss
13 of gifts and benefits and a loss of financial support.

14 55. The conduct of Defendants, individually and as peace officers, was
15 willful, wanton, malicious, and done with reckless disregard for the rights and
16 safety of DECEDENT and therefore warrants the imposition of exemplary and
17 punitive damages as to Defendants.

18 56. ALLENE HUTCHINSON, S.J.H. and D.S.H. seek punitive damages.
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20 57. Plaintiffs also seek attorney fees under this claim pursuant to 42
21 U.S.C. § 1988.

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FOURTH CAUSE OF ACTION

Interference with Familial Relationship and Freedom of Association - 42

U.S.C. § 1983

**(Plaintiffs ALLENE HUTCHINSON, S.J.H. and D.S.H. against all Defendants
and DOES 1-10, Inclusive)**

58. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 57 of this Complaint with the same force and effect as if fully set forth herein.

59. Plaintiffs ALLENE HUTCHINSON, S.J.H. and D.S.H. had a cognizable interest under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to be free from state actions that deprive them of life, liberty, or property in such a manner as to shock the conscience, including but not limited to, unwarranted state interference in their familial relationship with their father, DECEDENT.

60. As a result of the excessive force by Defendants, individually and as peace officers; and the failure of Defendants to intervene, DECEDENT died.

Plaintiffs ALLENE HUTCHINSON, S.J.H. and D.S.H. were thereby deprived of their constitutional right and familial relationship with DECEDENT.

61. Defendants, individually and as peace officers, acting under color of state law, thus violated the Fourteenth and Amendment rights of ALLENE HUTCHINSON, S.J.H. and D.S.H. to be free from unwarranted interference with their familial relationship with DECEDENT.

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1 62. The aforementioned actions of Defendants, individually and as peace
2 officers, along with other undiscovered conduct, shock the conscience, in that they
3 acted with deliberate indifference to the constitutional rights of DECEDENT,
4 Plaintiffs ALLENE HUTCHINSON, S.J.H., D.S.H. and with purpose to harm
5 unrelated to any legitimate law enforcement objective.

6 63. As a direct and proximate cause of the acts of Defendants,
7 individually and as peace officers, Plaintiffs have also been deprived of the life-
8 long comfort, support, society, care and sustenance of DECEDENT, and will
9 continue to be so deprived for the remainder of their natural lives. Plaintiffs are
10 also claiming funeral and burial expenses, loss of gifts and benefits and a loss of
11 financial support.

12 64. The conduct of Defendants, individually and as peace officers, and
13 was malicious, oppressive and in reckless disregard for the rights and safety of
14 DECEDENT and Plaintiffs, and therefore warrants the imposition of exemplary
15 and punitive damages as to Defendants.

16 65. Decedent's successors-in-interest seek wrongful death damages under
17 this claim.
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20 **FIFTH CAUSE OF ACTION**

21 **Municipal Liability for Unconstitutional Custom or Policy - 42 U.S.C. § 1983**
22 **(Plaintiffs ALLENE HUTCHINSON, S.J.H., D.S.H and THE ESTATE OF**
23 **DEMOURIA HOGG against Defendant CITY)**

24 66. Plaintiffs repeat and reallege each and every allegation in paragraphs
25 1 through 65 of this Complaint with the same force and effect as if fully set forth
26 herein.
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1 67. On information and belief Defendants' conduct, individually and as
2 peace officers, who tased and shot DECEDENT to death, was ratified by CITY's
3 police department supervisorial officers.

4 68. On information and belief, Defendants were not disciplined for killing
5 DECEDENT, who did not pose a risk to Defendants.

6 69. On and for some time prior to June 6, 2015, (and continuing to the
7 present day) Defendants, individually and as peace officers, deprived Plaintiffs and
8 DECEDENT of the rights and liberties secured to them by the Fourteenth
9 Amendment to the United States Constitution, in that said defendants and their
10 supervising and managerial employees, agents, and representatives, acting with
11 gross negligence and with reckless and deliberate indifference to the rights and
12 liberties of the public in general, and of Plaintiffs and DECEDENT, and of persons
13 in their class, situation and comparable position in particular, knowingly
14 maintained, enforced and applied an official recognized custom, policy, and
15 practice of:
16

- 17 **a.** Employing and retaining as police officers and other
18 personnel, including Defendants, individually and as peace
19 officers; who at all times material herein knew or reasonably
20 should have known had dangerous propensities for abusing
21 their authority and for mistreating citizens by failing to
22 follow written CITY Police Department policies, including
23 the use of excessive and deadly force;
- 24 **b.** Of inadequately supervising, training, controlling, assigning,
25 and disciplining CITY Police officers, and other personnel,
26 including Defendants who CITY knew or in the exercise of
27 reasonable care should have known had the aforementioned
28

propensities and character traits, including the propensity for violence and the use of excessive force;

c. By maintaining grossly inadequate procedures for reporting, supervising, investigating, reviewing, disciplining and controlling the intentional misconduct by Defendants who are Police Officers of CITY;

d. By failing to discipline CITY Police Officers' conduct, including but not limited to, unlawful detention and excessive and deadly force;

e. By ratifying the intentional misconduct of Defendants and other officers who are Police Officers of CITY;

f. By having and maintaining an unconstitutional policy, custom and practice of detaining and arresting individuals without probable cause or reasonable suspicion, and using excessive force, including deadly force, which also is demonstrated by inadequate training regarding these subjects. The policies, customs and practices of Defendants were done with a deliberate indifference to individuals' safety and rights; and

g. By failing to properly investigate claims of unlawful detention and excessive force by CITY Police Officers.

70. By reason of the aforementioned policies and practices of Defendants, individually and as peace officers, DECEDENT was severely injured and subjected to pain and suffering and lost his life and earning capacity for which THE ESTATE OF DEMOURIA HOGG is entitled to recover damages.

1 71. Defendants, individually and as peace officers, together with various
2 other officials, whether named or unnamed, had either actual or constructive
3 knowledge of the deficient policies, practices and customs alleged in the
4 paragraphs above. Despite having knowledge as stated above these defendants
5 condoned, tolerated and through actions and inactions thereby ratified such
6 policies. Said defendants also acted with deliberate indifference to the foreseeable
7 effects and consequences of these policies with respect to the constitutional rights
8 of DECEDENT, Plaintiffs, and other individuals similarly situated.

9 72. By perpetrating, sanctioning, tolerating and ratifying the outrageous
10 conduct and other wrongful acts, Defendants, individually and as peace officers;
11 acted with an intentional, reckless, and callous disregard for the life of
12 DECEDENT, and DECEDENT's and Plaintiffs' constitutional rights. Each of
13 their actions were willful, wanton, oppressive, malicious, fraudulent, and
14 extremely offensive and unconscionable to any person of normal sensibilities.

15 73. Furthermore, the policies practices, and customs implemented and
16 maintained and still tolerated by Defendants, individually and as peace officers;
17 were affirmatively linked to and were significantly influential force behind the
18 injuries of DECEDENT and Plaintiffs.
19

20 74. By reason of the aforementioned acts and omissions of Defendants,
21 individually and as peace officers, Plaintiffs were caused to incur funeral and
22 related burial expenses, loss of gifts and benefits and loss of financial support.

23 75. By reason of the aforementioned acts and omissions of Defendants,
24 individually and as peace officers, Plaintiffs have suffered loss of love,
25 companionship, affection, comfort, care, society, and future support.

26 76. Accordingly, Defendants, individually and as peace officers, each are
27 liable to Plaintiffs for compensatory damages under 42 U.S.C. § 1983.
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1 77. Plaintiffs seek wrongful death damages under this claim.

2 78. Plaintiffs also seek attorney fees under this claim.

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4 **SIXTH CAUSE OF ACTION**

5 **False Arrest – Wrongful Death**

6 **(Plaintiffs ALLENE HUTCHINSON, S.J.H., D.S.H. and THE ESTATE OF**
7 **DEMOURIA HOGG against all Defendants and DOES 1-10, Inclusive)**

8 79. Plaintiffs repeat and reallege each and every allegation in paragraphs
9 1 through 78 of this Complaint with the same force and effect as if fully set forth
10 herein.

11 80. Defendants, individually and as peace officers, while working as
12 Police Officers for CITY, and acting within the scope of their duties, intentionally
13 deprived DECEDENT of his freedom of movement by use of force, including
14 deadly force, threats of force, menace, fraud, deceit and unreasonable duress.
15 Defendants, individually and as peace officers, also detained DECEDENT. Said
16 detention was made without reasonable suspicion. There was an attempt to arrest
17 DECEDENT. Said arrest was attempted without probable cause.

18 81. DECEDENT did not knowingly or voluntarily consent.

19 82. The conduct of Defendants, individually and as peace officers; and
20 was a substantial factor in causing the harm to DECEDENT.

21 83. CITY is vicariously liable for the wrongful acts of Defendants,
22 individually and as peace officers; pursuant to section 815.2(a) of the California
23 Government Code, which provides that a public entity is liable for injuries causes
24 by its employees within the scope of the employment if the employee's act would
25 subject him or her to liability.
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1 84. The conduct of Defendants, individually and as peace officers; was
2 malicious, wanton, oppressive, and accomplished with a conscious disregard for
3 the rights of DECEDENT, entitling Plaintiffs to an award of exemplary and
4 punitive damages.

5 85. ALLENE HUTCHINSON was dependent on the DECEDENT,
6 including financially dependent.

7 86. S.J.H. was dependent on the DECEDENT, including financially
8 dependent.

9 87. D.S.H. was dependent on the DECEDENT, including financially
10 dependent.

11 88. Plaintiffs are seeking wrongful death damages under this claim.
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13 **SEVENTH CAUSE OF ACTION**

14 **Battery - Cal. Govt. Code § 820 – Wrongful Death**

15 **(Plaintiffs ALLENE HUTCHINSON, S.J.H., D.S.H. and THE ESTATE OF**
16 **DEMOURIA HOGG against all Defendants and DOES 1-10, Inclusive)**

17 89. Plaintiffs repeat and reallege each and every allegation in paragraphs
18 1 through 88 of this Complaint with the same force and effect as if fully set forth
19 herein.
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21 90. Defendants, individually and as peace officers, while working as a
22 Police Officer for the CITY Police Department, and acting within the course and
23 scope of their duties, intentionally tased and shot DECEDENT to death. As a
24 result of the actions by the defendants, DECEDENT suffered severe pain and
25 suffering and ultimately died from his injuries and lost earning capacity for which
26 THE ESTATE OF DEMOURIA HOGG is entitled to recover damages.
27 Defendants had no legal justification for using force against DECEDENT, and said
28

1 defendants' force was unreasonable, especially since DECEDENT did not commit
2 any crime when he was shot to death.

3 91. As a direct and proximate result of defendants' conduct as alleged
4 above, Plaintiffs suffered extreme and severe mental anguish and pain and have
5 been injured in mind and body. Plaintiffs also have been deprived of their life-long
6 love, companionship, comfort, support, society, care and sustenance of
7 DECEDENT, and will continue to be so deprived for the remainder of their natural
8 lives. Plaintiffs also are claiming funeral and burial expenses, loss of gifts and
9 benefits and loss of financial support.

10 92. CITY is vicariously liable for the wrongful acts of Defendants,
11 individually and as peace officers, pursuant to section 815.2(a) of the California
12 Government Code, which provides that a public entity is liable for injuries causes
13 by its employees within the scope of the employment if the employee's act would
14 subject him or her to liability.

15 93. The conduct of Defendants, individually and as peace officers, was
16 malicious, wanton, oppressive, and accomplished with a conscious disregard for
17 the rights of DECEDENT, entitling Plaintiffs to an award of exemplary and
18 punitive damages.

19 94. ALLENEHUTCHINSON was dependent on the DECEDENT,
20 including financially dependent.

21 95. S.J.H. was dependent on the DECEDENT, including financially
22 dependent.

23 96. D.S.H. was dependent on the DECEDENT, including financially
24 dependent.

25 97. Plaintiffs are seeking wrongful death damages under this claim.

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EIGHTH CAUSE OF ACTION

Negligence – Cal. Govt. Code § 820 – Wrongful Death

(Plaintiffs ALLENE HUTCHINSON, S.J.H., D.S.H. and THE ESTATE OF DEMOURIA HOGG against all Defendants and DOES 1-10, Inclusive)

98. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 97 of this Complaint with the same force and effect as if fully set forth herein.

99. The actions and inactions of the Defendants, individually and as peace officers; were negligent and reckless, including but not limited to:

- a. The failure to properly assess the need to detain, arrest, and use force or deadly force against DECEDENT;
- b. The negligent tactics and handling of the situation with DECEDENT, including failure to utilize the services of SWAT;
- c. The negligent detention, arrest, and use of force, including deadly force, against DECEDENT;
- d. The failure to provide prompt medical care to DECEDENT;
- e. The failure to properly train and supervise employees, both professional and non-professional, including Defendants.
- f. The failure to ensure that adequate numbers of employees with appropriate education and training were available to meet the needs of and protect the rights of DECEDENT;
- g. The negligent handling of evidence and witnesses.

100. As a direct and proximate result of defendants' conduct as alleged above, and other undiscovered negligent conduct, DECEDENT was caused to suffer severe pain and suffering and ultimately died and lost earning capacity for which THE ESTATE OF DEMOURIA HOGG is entitled to recover damages.

1 Also as a direct and proximate result of defendants' conduct alleged above,
2 Plaintiffs suffered extreme and severe mental anguish and pain and have been
3 injured in mind and body. Plaintiffs also have been deprived of the life-long love,
4 companionship, comfort, support, society, care and sustenance of DECEDENT,
5 and will continue to be so deprived for the remainder of their natural lives.
6 Plaintiffs are also claiming funeral and burial expenses, loss of gifts and benefits
7 and loss of financial support.

8 101. CITY is vicariously liable for the wrongful acts of Defendants,
9 individually and as peace officers, pursuant to section 815.2(a) of the California
10 Government Code, which provides that a public entity is liable for injuries causes
11 by its employees within the scope of the employment if the employee's act would
12 subject him or her to liability.

13 102. ALLENE HUTCHINSON was dependent on the DECEDENT,
14 including financially dependent.

15 103. S.J.H. was dependent on the DECEDENT, including financially
16 dependent.

17 104. D.S.H. was dependent on the DECEDENT, including financially
18 dependent.

19 105. Plaintiffs are seeking wrongful death damages under this claim.

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1 **WHEREFORE**, Plaintiffs requests relief as hereinafter provided.

2 **PRAYER FOR RELIEF**

3 1. For compensatory damages, including both survival damages and
4 wrongful death damages under federal and state law, in an amount to be proven at
5 trial;

6 2. For funeral expenses and loss of financial support;

7 3. For punitive damages against the individual defendants in an amount
8 to be proven at trial;

9 4. For prejudgment interest;

10 5. For an award of general and special damages in the amount to be
11 proven at trial;

12 6. For reasonable costs of this suit incurred herein;

13 7. For reasonable attorney's fees and costs as provided by law;

14 8. For such further other relief as the Court may deem just, proper and
15 appropriate.
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18 Dated: July 19, 2016

DOUGLAS / HICKS LAW, APC

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20 By: /s/ Jamon R. Hicks

JAMON R. HICKS, ESQ.

Attorneys for Plaintiffs
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Dated: July 20, 2016

DOUGLAS / HICKS LAW, APC

By: /s/ Jamon R. Hicks

JAMON R. HICKS

Attorneys for Plaintiffs

DECLARATION

**DECLARATION OF TYLENA LIVINGSTON, GUADIAN AD LITEM FOR
D.S.H.**

1. The decedent's name who is the subject of this action for wrongful death is DEMOURIA HOGG.

2. On Saturday, June 6, 2015 at approximately 7:27 a.m., DECEDENT was shot and killed while in his car in or around the area of Lakeshore off-ramp of the Westbound Highway 580, in the City of Oakland, California.

3. No proceeding is now pending in California for administration of the DECEDENT's estate.

4. I am the biological mother of the minor who is the biological child of the DECEDENT.

5. D.S.H. is the DECEDENT's successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) and succeeds to the DECEDENT's interest in the action or proceeding.

6. S.J.H. and D.M.H. are bringing this claim and are the only persons having the right to commence the action or proceeding.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

Dated: July 19, 2016

/s/ Tylena Livingston

Tylena Livingston, Declarant